IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 220 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHIRISH HIRALAL AAHIYA

Versus

STATE OF GUJARAT

Appearance:

MR ANSHIN H DESAI for Petitioner

MR IM PANDYA, APP for Respondent No. 1

MR P.C.KAVINA for Respondent No. 2

RULE SERVED BY DS for Respondent No. 3-8

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 23/07/2003

ORAL JUDGEMENT

1. Heard learned Advocate Mr.Anshin H.Desai for the petitioner, learned APP Mr. I.M. Pandya for Respondent

No.1 State and learned Advocate Mr.P.C. Kavina for Respondent No.2. Other respondents are served.

2. The short question which crops up in the background and in the fact that the present respondent No.2 Bharatkumar Bapulal Gandhi, through his power of attorney holder Ashinkumar Shantilal Doshi, filed a complaint against the present petitioner and respondents No. 4 to 8 for the offences punishable under Sections 406, 420, 407, 408 and 114 of the Indian Penal Code. Learned Magistrate i.e. Chief Judicial Magistrate, Rajkot, before whom such private complaint came to be filed, passed an order for investigation by the Police under Section 156(3) of the Criminal Procedure Code on 26th of December, 2002 and said case was registered as Criminal Case No. 454/2001. Thereafter, it appears that complainant present respondent No.3 filed a purshis before the learned Chief Judicial Magistrate, Rajkot, on 17.3.2003, declaring that between him and all the accused respondents herein, a compromise had taken place and he was not willing to continue the complaint. He requested the Court to pass necessary orders. However, vide order impugned in this Revision Application, which is of dated 7th of April, 2003, on the ground that when the investigation is pending with the Police, the request of the original complainant to dispose of the complaint and the case could not be acceded to and could be considered only when the report is filed by the Police before the Court. Being aggrieved, this Revision Application is preferred by original accused No.5 Shirish Hiralal Aahiya.

3. Original complainant respondent No.3 Ashwinkumar Shantilal Doshi, power of attorney holder of Bharatkumar Bapulal Gandhi, presented an affidavit, which is taken on record, confirming the fact that dispute between the complainant and the accused - respondents herein was amicably settled and Revision Application be allowed.

4. Despite of any procedural law or substantial law might be coming in the way of the learned Chief Judicial Magistrate for disposing of the said complaint in the terms as requested by the parties, in the facts and circumstances and in the interest of justice, this is a fit case wherein in revisional jurisdiction, this Court may exercise inherent powers and dispose of the said complaint when complainant himself declares to withdraw the above said complaint from the Court of Chief Judicial Magistrate, Rajkot.

5. In above view of the matter, this Revision

Application is allowed. The complaint filed by present respondent No.3 against the present respondents No. 4 to 8 and present petitioner stands withdrawn by original complainant - respondent No.3 herein and stands disposed of accordingly. The impugned order passed by learned Chief Judicial Magistrate, Rajkot is, therefore, quashed and set aside. Learned Chief Judicial Magistrate, Rajkot, is further directed to recall the papers of investigation directed in pursuance of the complaint, back and file the same with the record. Rule made absolute.

(J.R. Vora, J.)

p.n.nair